IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Customs Appeal No.37 of 2006
With
Customs Appeal No.39 of 2006

Customs Appeal No.37 of 2006

Commissioner of Customs (General) ... Appellant
V/s.
Worldwide Cargo Movers ... Respondent

Mr.Pradeep S. Jetly for the appellant.

Mr.Sujay Kantawala for respondent.

CUSTOMS APPEAL NO.39 OF 2006

Worldwide Cargo Movers ... Appellant
v/s.
1. Union of India

2. Commissioner of Customs
(General) Respondent. ... Respondent

Mr.Sujay Kantawala for appellant.

Mr.Pradeep S. Jetly for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATE OF RESERVING THE JUDGMENT: 5th October 2006

DATE OF PRONOUNCING THE JUDGMENT: 29th November 2006

JUDGMENT : (Per H.L. Gokhale, J.)

1. Customs Appeal No.37 of 2006 is filed by the Commissioner of Customs (General). Respondent to this Appeal is Worldwide Cargo Movers, a Firm functioning as a Custom House Agent ("CHA" for

short). This Firm has filed the connected Appeal No.39 of 2006. Union of India and the Commissioner of Customs (General) are the respondents to this Appeal. Both these Appeals are filed under Section 130 of the Customs Act, 1962 ("the said Act" for short) against an order dated 4th April 2006 passed by the Customs Excise and Service Tax Appellate Tribunal, Mumbai ("CESTAT" for short) in Appeal No.C-72 of 2006 which was filed by the said Firm. Since the order under challenge is one and the same, both the Appeals are heard and are being decided together. However, for the sake of convenience, the Commissioner of Customs (General) is hereinafter referred to as "the appellant" and the Firm as "the respondent".

2. Amongst others, we are concerned in these Appeals with the provisions of the Customs House Agents Licensing Regulations, 2004 which are framed under Section 146(2) of the said Act. The respondent was holding the Custom House Agent licence bearing CHA licence No.11/430 issued under these regulations. The same was suspended by the appellant by order dated 2.11.2005 in view of serious allegations of misconduct against the Firm for the act of its employee one Rehman Iqbal

Shaikh authorised under Regulation 8 of these regulations (referred as Regulation 8 employee). The allegations were arising out of two incidents viz. (i) mis-declaration of the value of a Volkswagen Car and deliberately giving wrong name of country of export and also of the importer to avoid the correct duty. This was in April 2005 at Air Cargo Complex at Sahar and (ii) the other incident was in May 2005. That was concerning the outright smuggling of a Mercedes Benz Car at JNPT Nhava Sheva.

3. The respondent herein challenged this suspension by filing Writ Petition No.7625 of 2005 which was dismissed by this Court by its order dated 17.11.2005. The main grievance of the respondent was that it was not afforded a hearing before the issuance of the suspension order. The suspension was defended on the ground that in view of the gravity of the allegations, an urgent action was justified on facts and in law. This Court recorded a statement on behalf of the appellant that in any case an enquiry will be conducted thereafter and the same will be completed within eight weeks. In view of this assurance of a post decisional hearing, the suspension was not interfered. The decision of

this Court was challenged by filing a Special Leave Petition to the Apex Court. The Apex Court issued a notice but did not grant any stay. In the meanwhile, i.e. on 17.1.2006, after completing the enquiry, the CHA licence of the respondent came to be revoked. The whole of the security furnished by the CHA at the time of issuing the CHA licence was also directed to be forfeited. It is this order which was challenged by the respondent by filing an Appeal to the CESTAT under Section 129A of the said Act.

4. The CESTAT, by its order dated 4th April 2006, set aside the revocation and directed that the licence be restored, though on giving a fresh security and obtaining another Regulation 8 employees' service (since the respondent had terminated the services of the employee involved in the said misconduct). This order of the CESTAT is challenged by the appellant by filing Customs Appeal No.37 of 2006. The respondent herein has challenged that very order by filing Customs Appeal No.39 of 2006 since the respondent is aggrieved by the part of the order which directs giving of a fresh security.

5. As far as Customs Appeal No.37 of 2006 is

concerned, it was admitted on 24th August 2006 to examine the following question of law:-

> " Whether the CESTAT is justified in setting aside the revocation of the CEA licence considering that in the facts and circumstances of the case and upon the material available on record such setting aside is perverse in law."

An ad-interim stay on the order passed by the CESTAT was also granted.

6. As far as Customs Appeal No.39 of 2006 is concerned, it was also admitted on the same day to consider the following question of law:-

> " Whether the Tribunal could have insisted upon a fresh security for the restoration of the licence when otherwise the order was in favour of the Custom House Agent ?

Both the Appeals have been heard together.

7. The appellant has enclosed to the Appeal the following documents as Exhibits A to D:-

1) Exh.A - Copy of Inquiry Officer’s Report.
2) Exh.B - Copy of order-in-original No.02/ 2006 passed by the Appellant.
3) Exh.B-1 - Copy of Memo of Appeal filed before CESTAT by the Respondent.
4) Exh.C - Copy of impugned order No.A/317/ WZB/06 C-II (C.S.T.B.) passed by the CESTAT, Mumbai.
5) Exh.D - Copy of the Customs House Agents Licensing Regulations, 2004.

The appellant has filed an additional affidavit of one Mr.A.J. Shetty, Deputy Commissioner of Customs and has placed on record the Notice dated 23rd November 2005 which was issued to the respondent prior to the enquiry enclosing therewith I. Grounds of imputation,II. Articles of charges (which were six in all) III. List of documents and witnesses relied upon by the Department. The enquiry was conducted by the Assistant Commissioner of Customs. The respondent did not file any reply nor did attend the enquiry though served with the notice with all annexures on 24.11.2005. The Enquiring Officer found that all the six charges were proved. He gave a report accordingly on 26.12.2005. It was forwarded to the respondent to seek its explanation. The

respondent filed its reply dated 6.1.2006 thereafter. This was the only response of the respondent in the entire proceedings. It was considered by the appellant who thereafter passed the revocation order on 17.1.2006.

8. As far as Appeal No.39 of 2006 is concerned, the following documents are enclosed therewith:-

1) Exh.A - Appeal No.C/72/06.Mum filed by the appellant in the Hon'ble CESTAT, Mumbai.
2) Exh.B - Order No.A/317/WZB/06-C.II. (C.S.T.B.) dated 04/04/2006 passed by the Hon'ble CESTAT, Mumbai.
3) Exh.C - Order in original No.02/2006 dated 17/01/2006.

9. We have perused the documents on record. From the record it is seen that the above-referred Rehman Shaikh lodged a Bill of Entry on 11th April 2005 at the Air Cargo Complex at Sahar. This Bill of entry gave the name of his younger brother Ahmed Imran Shaikh as the importer of one Volkswagen Touareg Car from Germany. The address of this Ahmed Shaikh was given as residing at Chinchwad, Pune. The assessable value was

declared as Rs.20,46,014.47. Since the declared value of the said vehicle appeared to be on lower side the Special Investigation and Intelligence Branch (SIIB) took the matter for investigation. They examined the vehicle in the presence of the said Rehman Shaikh. They found that the vehicle was fitted with optional accessories such as Anti-theft signal equipment, Napa leather upholstery, Electronic control system, Fire extinguisher system, Garage door opener, Reversible mat for luggage, Compass etc. They were quite expensive items and these accessories were not declared. Since the person whose name was given as importer was Ahmed Imran Shaikh, this Ahmed Imran was summoned and his statement was recorded under Section 108 of the Customs Act, 1962 ("the said Act" for short). He voluntarily accepted that he was not the actual owner but the actual owner was one Sumesh Menon, whose address and whereabouts were not known. He further stated that his financial condition was not so sound that he could purchase even a small car. He was working with M/s.Metro Electronics at Bandra and earning a salary of Rs.5,000/- per month. He further stated that this was all done at the instance of the said Sumesh Menon who did not want the car in his own name because he had manipulated

the invoice presented to the Customs. He stated that as per the telephonic discussion with the said Sumesh Menon he wanted to clear the said car on payment of duty on the actual value of the goods.

10. Rehman Shaikh in his statement under Section 108 of the said Act, admitted that the invoice submitted to the Customs was a fake one since it was not showing the extra company fittings. He also admitted that the port of loading was not from Germany but was from Dubai. Thus, it was claimed to be a clear case of mis-declaration of the value of the imported car, a case of non-declaration of the correct name of the importer and not declaring the correct name of the place from which the car was exported. The respondent was, therefore, charged for the vicarious liability as the employer of Rehman Shaikh for the violation of the provisions of Regulations 13(d), 13(e), 13(l) and 19(8) of the CHA licence Regulations. We shall refer to these provisions a little later.

11. As far as the second case is concerned, it was the case of the outright smuggling of Mercedes Benz car through Jawaharlal Nehru Port at Nhava

Sheva wherein the above-referred Rehman Shaikh was involved. In this case, a complaint was received that one Sanjay Chhabria residing at Bandra was recipient of such a smuggled Mercedes Benz car. SIIB found such a car at the premises of the said Chhabria. The said Chhabria stated that the car was that of one Sanjay Ramchandra Surshetwar. Only his address was used by the said Sanjay Surshetwar. On inquiries with this Sanjay Surshetwar he stated that he financed the import of the car and gave money to one Yusuf Poonawalla. This Poonawalla introduced him to Rehman Shaikh. Poonawalla used to give Rehman the work of importing. He had given the work of clearing of one BMW car to Rehman Shaikh in the past. The Bill of Lading was in the name of Sanjay Chhabria. Poonawalla and Sanjay Surshetwar with the help of Rehman Shaikh, removed the said Mercedes car from the container arrived at in the port and substituted it by old and used Toyota Corolla car. This was all managed by Rehman Shaikh in view of his acquaintances with various concerned persons in his capacity as CHA agent. Thus, this was a case of theft and smuggling and trying to evade the customs duty. The respondent was, therefore, charged with the violation of the provisions of Regulations 13(n), 19(8) and 20(1)(c) of the above

Regulations.

12. From the record of the enquiry, it is seen that all the relevant documents were produced on behalf of the Department to prove the misconduct alleged. Thus, as far as the incident at Area Cargo Complex, Sahar is concerned, the Department produced the order in original passed by the Commissioner of Customs at Sahar as well as statements of Ahmed Imran Shaikh and Rehman Shaikh recorded under Section 108 of the said Act and the copy of Bill of Entry and the Invoice. As far as the incident at Jawaharlal Nehru Port is concerned, it produced the arrest memo and the statements of Rehman Shaikh, the above-referred Sanjay Surshetwar, Sanjay Chhabria, Yusuf Poonawalla, the Operation Manager and the Chief Executive Officer of CFS recorded under Section 108 of the said Act, freight manifest and Bill of Lading showing Sanjay Chhabria as the consignee and various panchanamas at the time of arrest and recovery of the vehicle.

13. The regulations which were invoked against the respondent in the first case were Regulations 13(d), 13(e), 13(l) and 19(8). Regulation 13 gives the obligations of the customs house agents.

In the second case, the regulations invoked were Regulations 19(8), 13(n) and 20(1)(c). These clauses of the above-referred regulations read as follows:-

> " 13. Obligations of Customs House Agent - A Customs House Agent shall -
>
> (d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;
>
> (e) exercise due diligence to ascertain the correctness of any information which ie parts to a client with reference to any work related to clearance of cargo or baggage;
>
> (l) ensure that all documents, such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter, as the case may be, and the name of the Customs House Agent, prominently at the

top of such documents;

(n) ensure that he discharges his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay. "

Regulation 19(8) reads as follows:-

" 19. **Employment of persons** -

(1) . . . . . .

(2) . . . . . .

(3) . . . . . .

(4) . . . . . .

(5) . . . . . .

(6) . . . . . .

(7) . . . . . .

(8) The Customs House Agent shall exercise such supervision as may be necessary to ensure the proper conduct of any such employees in the transaction of business as agents and be held responsible for all acts or omissions of his employees in regard to their employment. "

Regulation 20 reads as follows:-

" 20. **Suspension or revocation of licence** - (1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part of whole of security, on any of the following grounds name -

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1) the Commissioner of Customs may in appropriate cases where immediate action is necessary, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated. "

14. As stated above, the Enquiring Officer held that all the articles of charges were established. The respondent did not participate in the enquiry. After the report of Enquiring Officer was served on the respondent, it filed one reply dated 6th January 2006. This reply is in three parts. In the first part, it is stated that the grounds of imputation are framed against the respondent. In the second part, the respondent has dealt with the incident at the Air Cargo Complex and in the third part, it has dealt with the incident at the Jawaharlal Nehru Port. As far as the incident at Jawaharlal Nehru Port is concerned, the respondent has stated that it was not even aware of these activities of Rehman Shaikh and whether there was any flouting of the provisions of the Customs Act. It is stated that no show cause notice was issued to it regarding the smuggling / clandestine removal of car. It is

further stated that had the respondent been aware of the same, it would not have encouraged its employee into any such thing. It is stated that Rehman Shaikh has been removed from its service, though it is further stated that Rehman Shaikh has contended that his arrest was illegal and that he had got an order in his favour in that connection in the High Court. Thus, it is clear that the respondent is not defending him with respect to what happened at Jawaharlal Nehru Port, though it is contending that it is not aware about it at all. The respondent is, in any case, not approving or supporting what has happened.

15. As far as the incident at Air Cargo Complex at Sahar is concerned, it is stated that the importer and Rehman Shaikh had filed a proceeding before the Settlement Commission and that the Commission had admitted the proceeding under Section 127(c)(i) of the said Act. It is further stated that the Settlement Commission had asked Ahmed Shaikh to deposit the difference of duty to the tune of Rs.6,53,630/-. It is further stated that he has been asked to give a Bank Guarantee / Bond and the same is not sought from Rehman Shaikh. Thereafter it is stated that the charges framed against the respondent were unjust.

16. The appellant has considered this reply. He has given a personal hearing to one Mohammed Ali Gulam Ali Mukadam, partner of the CHA Firm, but it appears that Mr.Mukadam merely reiterated the submissions in the reply. He submitted that the partners were not involved in these allegations. The appellant-Commissioner of Customs has considered these submissions. He has noted that under Regulation 13(d), it is the responsibility of the CHA to comply with the provisions of the said Act. He must advise his clients accordingly and in case of non-compliance, to bring the act to the notice of the authorities concerned. In para 38(i), the appellant has observed that Rehman Shaikh has, in fact, colluded with other persons in the incident at Sahar Air Port. It was his brother whose name was shown as the importer when, in fact, he was not. Surely, this could not have been done except by the involvement of Rehman Shaikh. Regulation 13(e) requires the CHA to exercise due diligence to ascertain the correctness of the information. Obviously, nothing of the kind has been done by Rehman Shaikh in the incident at Sahar. Regulation 13(l) requires that all the documents must show the correct names of the parties. In the

Sahar case, obviously fake names were given. Regulation 19(8) requires CHA to exercise all necessary supervision of the conduct of its employees and clearly states that the CHA will be held responsible for the acts or omissions of his employees. In view of these findings the appellant has passed the order revoking the licence.

17. As far as the Tribunal is concerned, the main factor, which has impressed it, is that according to it, the Firm is not responsible for the alleged two incidents. In sub-para (a) of para 2.1, it stated that there is no question of vicarious liability since the Firm was not served with any Show Cause Notice for the alleged complexity in clearance of the Volkswagen car at Sahar. As far as the clearance of Mercedes car at JNPT is concerned, the Tribunal says that the Firm came to know about it only after the arrest of Rehman Shaikh. In sub-para (b) it observed as follows:-

> " There is no material which could be shown to us from the statements of Shri Rehman I. Shaikh to even remotely suggest that the partners of the said firm or the

> firm in any way was privy to or in concert to these activities of Rehman. The activities are not the duties to be performed by Shri Rehman I. Shaikh in the course of his employment. "

The Tribunal lastly held in para 3.1 that the CHA licence was the only means of earning livelihood of the appellant and his other employees. It has relied upon the judgment of CESTAT at Chennai in the case of **Nanda International vs. Commissioner of Customs, Chennai reported in 2004 (176) ELT 524** in that behalf. That was a case where the appellant had allowed their licence to be misused by others for the purpose of processing export documents relating to a few consignments of ready-made garments. The licence was suspended some six years ago and later-on revoked. The Tribunal observed that nearly six years had passed in the meanwhile. Consequently the employees of the CHA too must have suffered. On this ground, the Tribunal set aside the order of revocation of the licence, though forfeiture of the security amount was upheld.

18. Mr.Kantawala, learned Counsel appearing for the respondent-Firm, submitted that it is

entirely a matter of discretion for the Tribunal and in his submission, the Tribunal has correctly exercised it, except that the fresh security should not have been insisted. He referred to a judgment of the Division Bench of the Calcutta High Court in the case of **Union of India vs. Shashi Deo Jha reported in 1999 (113) E.L.T. 385 (Cal).** That was a case of suspension of a CHA licence. The High Court has held that it cannot be indefinite as it affects the livelihood of the employees.

19. Mr.Kantawala then referred to the judgment in the case of **Falcon Air Cargo & Travel (P) Ltd. vs. Commissioner of Cus., New Delhi reported in 2002 (141) E.L.T. 284** which is a judgment of CEGAT, New Delhi. That was a case where there were charges of improper supervision of the employees subletting licence and negligence concerning excess draw back. The Tribunal has held that the allegations were not grave enough to invite punishment of revocation and that punishment must be commensurate with the offence.

20. Mr.Kantawala lastly relied upon another judgment of the CEGAT in the case of **C.J. Joshi & Sons vs. Commissioner of Customs, Kandla reported**

in 1999 (113) E.L.T. 900 (Tribunal) where also the Tribunal has held that since the revocation deprives the person of his livelihood for the rest of his life, it was not called for.

21. Mr.Jetly, learned Counsel appearing for the appellant-Revenue, on the other hand, submitted that the facts of the case did not warrant any leniency and that this was a fit case where the appellant had taken the correct remedial measure and that the Tribunal was not expected to interfere. He drew our attention to the two judgments of two Division Benches of the Madras High Court. The first is in the case of **Arvind C. Bhagat vs. Commissioner of Customs, Chennai reported in 2000 (122) E.L.T. 678**. That was a case where the CHA had stood surety for a party without satisfying himself that the importer was a real one and was an actual user. The Department found that the importer was a fictitious entity and refused to renew the licence of the CHA. The action of the Department was upheld by the Division Bench. An SLP against this judgment being SLP (Civil) Nos.19713-19714 of 2000 has been dismissed by the Apex Court as recorded in Arvind C. Bhagat v. Commissioner - 2001 (129) E.L.T. A191 (S.C.).

22. A similar view is taken by another Division Bench of the Madras High Court in **Sri Kamakshi Agency vs. Commissioner of Customs, Madras reported in 2001 (129) E.L.T. 29**. In that matter, the CHA had given a Power of Attorney to another party. That party misused the licence and signed blank documents without knowing the importers / exporters and the nature of goods. This CHA was responsible for the fraudulent activity carried out by the Power of Attorney leading to the revocation of the licence. The Department's action was upheld by the High Court; SLP (Civil) No.631 of 2001 filed by the Kamakshi Agency was dismissed by the Apex Court as recorded in 2002 (142) E.L.T. A87 (S.C.). Mr.Jetly submitted that the present case is an equally strong case where the Tribunal was gravely in error and its order was perverse.

23. We have considered the submissions of both the Counsel. The facts of the present case clearly show a serious involvement of the said Rehman Shaikh, a Regulation 8 employee of the respondent-Firm. As far as the first case is concerned, it is clearly a case of mis-declaration of the imported vehicle. A number of expensive

gadgets attached to the car were not declared and the value of the vehicle was declared to be less than half. The correct name of the importer was also not given purposely. In fact, the name of the brother of Rehman Shaikh was shown as the importer and prima facie, he had hardly economic strength to import any such vehicle as he himself stated in his statement under Section 108 of the Customs Act which is otherwise admissible in evidence. That apart, all the documents submitted by the said Rehman Shaikh were having the stamp of the respondent-firm. The respondent-firm was served with the notice of enquiry. It has acknowledged the receipt of the same, including all the annexures consisting of the imputations, articles of charges and the list of documents and witnesses. Nobody from the respondent-firm turned up at the time of enquiry. It is only after the report was submitted that the respondent appeared before the appellant-Commissioner of Customs and what is most interesting is that in its reply the respondent has tried to justify the said Rehman Shaikh for whatever he has done as far as this incident is concerned. We have referred to the relevant part of its reply in this behalf. The appellant has, in fact, referred to the fact that Rehman Shaikh, the brother of the said Ahmed Imran

Shaikh filed the application to the Settlement Commission which asked him to deposit the difference of duty.

24. Mr.Kantawala submitted that the respondent-firm could not be held responsible for the acts of Rehman Shaikh. However, from the record of the proceedings, it is clear that the appellant did not take this stand in its only document which it has filed on record. This was the only response of the respondent. As far as the incident at Sahar Air Port is concerned, it does not say that Rehman Shaikh is responsible for this incident and that the respondent has nothing to do with it. If the appellant was to take such a stand, one could perhaps understand. The fact, however, remains that the appellant has not taken any such stand. This being the position, the Tribunal had no reason to come to the conclusion as it has done in sub-para (a) of para 2.1 that the Firm was not liable for the alleged acts of its employees. The Firm was clearly told that it was being proceeded for failure of its obligations under Regulations 13(d), (e), (l) and (n) of the CHA Licensing Regulations. These regulations clearly stated that the CHA has to advise its clients correctly, exercise due diligence, ensure

that the correct documents and information are given and discharge its duties in accordance with law. The respondent knew that the appellant was relying upon Regulation 19(8) which clearly stated that the CHA will be responsible for all acts or omissions of its employees. In the present case, Rehman Shaikh had no authority to go into the Customs area except as the Regulation-8 employee of the respondent-firm. He having functioned for the respondent-firm and the respondent having been clearly told in advance that these are the rules, it was its obligation to observe. In any case, as stated above from the reply filed by the appellant, he has not at all taken this position with respect to the Sahar incident that Rehman Shaikh is responsible and the respondent-firm is not. The respondent has defended Rehman Shaikh. That being the position, the appellant was entitled to draw the inference that the respondent was party to the entire episode.

25. This being the position, the principles of vicarious liability of a master will certainly apply. The Oxford Dictionary gives the meaning of the word vicarious "as delegated" or "deputed". The Black’s Law Dictionary (7th Edition) defines the word "vicarious" as "performed" or "suffered

by one person as substitute for another". As held by the Apex Court in para 27 of **Sitaram Motilal Kalal vs. Santanuprasad Jaishankar Bhatt reported in AIR 1966 S.C. 1697** for a master to be vicariously liable for the acts of his servant acting in the course of his employment, the act must be a wrongful act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. In para-30 of the judgment, a reference is made to Salmond on the Law of Torts to point out that the act must be committed in the course of business of master so as to form part of it and not being merely co-incidental in time with it. In the present case, all these tests will apply.

26. As far as the second incident is concerned, the respondent has disowned the said Rehman Shaikh for the act of theft on his part and has, in fact, removed him from the service and that is what the respondent has stated in its reply. Here, at-least the respondent is not owning or supporting Rehman Shaikh in any way. As far as this incident is concerned, it is perhaps possible for the respondent to say that it is not responsible and that it should not be made to suffer having taken action against the employee

concerned. However, what is material to note is that as far as the first incident is concerned, it is grave enough for the appellant to come to the conclusion that the respondent does not deserve to have the CHA licence any more. The CHA Regulations which have been quoted above, are very clear and the CHA is responsible for all acts and omissions of his employees. It is further material to note that it is for the Commissioner of Customs to decide how many such agents should be permitted to operate in the Customs area. This is clear from Regulation 4 which states that the Commissioner of Customs has to invite the application for grant of such number of licence as assessed by him to act as an CHA. There is an examination to become a CHA and the Commissioner has to satisfy himself that the persons concerned are persons of integrity. Thus, Regulation 11(2)(b) states that when it comes to renewal, also the Commissioner has to be satisfied of absence of instances of any complaint or misconduct, including non-compliance of any of the obligations specified in Regulation 13. In the present case, the Assistant Commissioner had clearly held that as far as the first incident at Sahar was concerned, the violation of Regulations 13(d), (e), (l), (n) and 19(8) was clearly

established. This being the position, as the authority in-charge of the Customs, it was his responsibility to see to it that such agents are no longer continued. As stated above, under Regulation 4, he has a right to regulate the number of licences. Even at the time of renewal, he may refuse to renew the licence in the event of a single incident of misconduct and for non-compliance of any of the obligations. In the present case, the respondent is justifying the fraud that the Regulation-8 employee has done and prima facie, there is sufficient material on the basis of which the appellant has held that the charges are proved.

27. We have noted what the Tribunal has observed in the impugned order. In our view, the finding given by the Enquiring Officer and thereafter the order passed by the appellant in original are fully justified on the facts of the case. The authorities relied upon by Mr.Kantawala undoubtedly are mostly of the Tribunal. Even the judgment of the Calcutta High Court speaks about the suspension of licence not to be continued indefinitely. Here, we are concerned with revocation which has been resorted to after a due enquiry. We are conscious that the punishment has

to be commensurate with the misconduct and that by revocation the respondent and its employees are going to suffer. At the same time, we cannot forget that though it is the right of a citizen to carry on his business or profession, it is subject to reasonable restrictions and conditions. In the present case, those conditions were already stipulated. In the case of Arvind Bhagat (supra), the order of Madras High Court has been left undisturbed by the Apex Court. It was a case where the CHA had failed to discharge his obligation to exercise proper supervision. In the case of Sri Kamakshi Agency (supra), the CHA was held responsible for the fraudulent activities of a third party whom it had delegated its functions. That was also left undisturbed by the Supreme Court. The present case is some what similar to one of Sri Kamakshi Agency, if not worse. Here, the CHA has brazenly defended his Regulation 8 employee who gave a fake name of his brother as an importer for undervaluing the imported car. Thus, the employee of the CHA was party to the Firm. The CHA has not disowned him and has, in fact, defended him in the reply filed by him before the appellant. That being so, he is clearly responsible vicariously.

28. In our view, the Tribunal has committed a grave error in interfering with the decision of a domestic authority. In a departmental proceeding one has to see whether the principles of natural justice are followed and the findings are justified from material on record. Once both these aspects are satisfied if an outsider Tribunal interferes, its findings and order will be improper and perverse which is what has happened in the present case. Similarly when one comes to the disciplinary measures, one must not lose sight of the fact that the appellant-Commissioner of Customs is responsible for happenings in the Customs area and for the discipline to be maintained over there. If he takes a decision necessary for that purpose, the Tribunal is not expected to interfere on the basis of its own notions of the difficulties likely to be faced by the CHA or his employees. The decision is best to be left to the disciplinary authority save in exceptional cases where it is shockingly disproportionate or mala fide. That is not the case here.

29. In the circumstances, we allow Customs Appeal No.37 of 2006 filed by the appellant-Commissioner of Customs since the CESTAT was not justified in setting aside the revocation

of the CHA licence in the facts and circumstances of the case and on the material on record. The order of the CESTAT setting aside the order of the appellant-Commissioner of Customs was clearly perverse in law. Appeal No.37 of 2006 is, therefore, allowed. The order dated 4.4.2006 passed by the CESTAT is set aside and the order dated 17.1.2006 passed by the appellant-Commissioner of Customs is restored.

30. Inasmuch as Customs Appeal No.37 of 2006 is allowed, Customs Appeal No.39 of 2006 stands dismissed. Inasmuch as we are upsetting the decision of the Tribunal in favour of the CHA and once the revocation is confirmed, there is no occasion to take any further security for the purposes of renewal of the licence. Customs Appeal No.39 of 2006, therefore, stands dismissed.

31. There shall be no order as to costs in both the above Appeals.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)